

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:20-cv-00189-MR**

IAIAN EVANS MCCLELLAN,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
TODD SCHETTER, et al.,)	
)	
)	
Defendants.)	
_____)	

THIS MATTER is before the Court on Defendant Davis’ untimely filing of an Answer to Plaintiff’s Amended Complaint. [Doc. 47].

Plaintiff Iaian Evans McClellan (“Plaintiff”) filed this lawsuit on July 10, 2020. [Doc. 1]. On April 27, 2021, Plaintiff’s Third Amended Complaint [Doc. 28] survived initial review as to Plaintiff’s claims against Defendants Todd Schetter and Caleb Davis for their failure to protect under the Eighth Amendment. [Doc. 29]. The Court ordered the Clerk of Court to begin the procedure for waiver of service on these Defendants pursuant to Local Civil Rule 4.3. [Id. at 13].

On June 28, 2021, Defendant Davis’ waiver of service was returned executed, making his answer due on August 27, 2021. [See 6/28/2021 Docket Entry]. On November 9, 2021, because Defendant Davis had not

answered the Complaint or otherwise defended this action, the Court ordered Plaintiff to take further action to prosecute this case against Defendant Davis. [Doc. 43]. Plaintiff timely moved for entry of default against Defendant Davis. [Doc. 44]. On December 6, 2021, the Court granted Plaintiff's motion and directed the Clerk to enter default against Defendant Davis. [Doc. 45]. The same day, just hours after entry of default, Defendant Davis filed an Answer to Plaintiff's Third Amended Complaint. [Doc. 47]. Defendant Davis, however, failed to move to set aside the entry of default or for leave to file the answer out of time. As counsel should be aware, answers filed after default has been entered have no effect. See Joe Hand Promotions, Inc. v. Lopez, No. 3:18-cv-00526, 2020 WL 6291371, at *1 (W.D.N.C. Oct. 27, 2020) ("When a defendant is in default, the well-pleaded factual allegations of the complaint are deemed to be admitted by the defendant."). The Court, therefore, will strike Defendant Davis' untimely Answer.

Given defense counsel's history with this Court in failing to abide the deadlines of the Federal Rules of Civil Procedure and the Court and to generally manage his cases, the Court will direct the Clerk to send a copy of this Order to James Trachtman, Special Deputy Attorney General, who the Court understands to be defense counsel's supervisor.

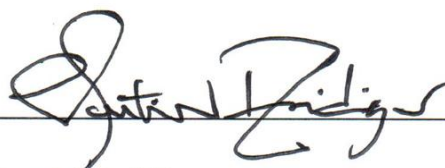
ORDER

IT IS, THEREFORE, ORDERED that Defendant Davis' Answer to Plaintiff's Amended Complaint [Doc. 47] is hereby **STRICKEN** from the record in this matter.

The Clerk is respectfully instructed to email a copy of this Order to James Trachtman, Special Deputy Attorney General, Section Head, Public Safety Section, North Carolina Department of Justice at jtrachtman@ncdoj.gov.

IT IS SO ORDERED.

Signed: December 8, 2021



Martin Reidinger
Chief United States District Judge

